

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

OALJ Case No. 2017-OFC-00006

OFCCP No. R00192699

**PROPOSED FINDINGS OF FACT OF
DEFENDANT ORACLE AMERICA,
INC.**

I. OFCCP’S AUDIT, ALLEGATIONS AND PROCEDURAL HISTORY

1. Oracle America, Inc. (“Oracle”) is a government contractor. ALJX-1 at 1-2. On September 24, 2014, OFCCP initiated a compliance review (audit) of Oracle’s Redwood Shores, California headquarters (“HQCA”) for January 1, 2013 - June 30, 2014. ALJX-1 at 4-5.
2. During the audit, OFCCP analyzed, among other materials, HQCA employee compensation data for 2014 and hiring data, and interviewed Oracle employees and managers. On March 11, 2016, OFCCP issued Oracle a Notice of Violation (“NOV”) for HQCA. P-135. Among other allegations, the NOV stated Oracle engaged in hiring and compensation discrimination.
3. On January 17 and 25, 2017, OFCCP filed its Complaint and First Amended Complaint (“FAC”). OFCCP alleged (a) hiring discrimination against African American, Hispanic, and White applicants in favor of Asians in Oracle’s “PT1 job group” at HQCA; (b) compensation discrimination against (i) female employees in the Information Technology (“IT”), Product Development, and Support job functions and (ii) African Americans and Asians in Product Development at HQCA; and (c) that Oracle “refused to produce” certain data and documents during the compliance review and engaged in record keeping violations.
4. On March 8, 2019, OFCCP filed a Second Amended Complaint (“SAC”). The SAC added allegations that Oracle intentionally “steered” women in Product Development, Support, and IT, and Asian and African American employees in Product Development, into lower-paying jobs. The SAC also alleged that Oracle’s purported pay discrimination may be due to “Oracle’s reliance on prior salary in setting compensation for employees at hire.” SAC, ¶ 32.
5. The parties resolved the hiring claim. *See* April 30, 2019 Order Adopting Consent Findings.
6. On April 4, 2019, OFCCP sent a letter to current and former Oracle employees, including many managers. D-447. The letter declared, among other things, “We want to assure you that you have not been accused of any wrongdoing.” *Id.* OFCCP later explained this meant that “Oracle’s top management and Human Resources managers,” and not lower-level managers, were responsible for the alleged discrimination, and confirmed that OFCCP is not accusing any managers with the Product Development, IT or Support job functions of any

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wrongdoing, including discrimination. OFCCP's Position Statement at 2, 7-9.

II. ORACLE'S JOB ARCHITECTURE AND THE GLOBAL JOB TABLE

7. Oracle is a global technology company that offers more than 800 software and hardware products worldwide. P-274, ¶¶ 6, 7. Oracle categorizes its global workforce using a "Global Job Table." The Global Job Table contains 1,600 numeric job codes and corresponding system job titles for its global workforce of approximately 137,000 employees. Tr. at 1164:4-1166:14 (Waggoner); J-123. For each job code and system job title, the Global Job Table also identifies a job function, specialty area, and global career level, although job title is the narrowest of these categories. J-123; Tr. at 1165:5-1166:14; P-274, ¶¶ 22, 24.
8. Oracle uses separate global career level tracks for "individual contributors" and managers. P-274, ¶ 24; J-144 at slide 9. Individual Contributor career levels range from IC0 to IC6. P-274, ¶ 24. IC0 represents a trainee, intern or clerical position. IC1 represents an entry level position. JX 144 at 11; Tr. at 1172:10-14 (Waggoner). Higher level positions require more experience and responsibility. Tr. at 1172:10-14; 1191:24-1192:13 (Waggoner); J-124. Manager career levels range from M1 to M10. J-144 at slide 10. M1 represents the lowest level manager. M10 is Oracle's CEO. *Id.*
9. Each job code on the Global Job Table has a "brief description," "detailed description," and associated "job requirements." J-123; Tr. at 1173:22-1174:18, 1175:23-1176:2 (Waggoner). These descriptions and requirements are used by hiring managers when posting jobs and are general in nature. J-123; Tr. at 1174:24-1175:6 (Waggoner). Many job codes share descriptions and requirements, even across different career levels and specialty areas. J-123; Tr. at 1173:22-1174:9 (Waggoner). When hiring managers post jobs for positions at Oracle, they add greater detail about the skills, duties, and responsibilities relating to specific role for which they are hiring. Tr. at 1176:6-1177:5, 1178:9-1180:1 (Waggoner); J-133.
10. An employee's job code and corresponding job title give Oracle "a very general sense of the duties that [a] person performs and the roles that exist [] at Oracle." Tr. at 1164:20-1165:1 (Waggoner). Yet as explained by Kate Waggoner, Oracle's Senior Director of Global

Compensation, one cannot determine an employee's job duties or responsibilities based on their job code and job title alone. Tr. at 1166:19-1167:13 (Waggoner). Instead, other factors such as the product or team on which an employee works determine and differentiate job duties and responsibilities. Tr. at 1167:14-18 (Waggoner). The Court finds Ms. Waggoner's testimony credible given her time at Oracle, experience, level of detail and consistency, and the fact it was not contradicted on cross-examination.

11. The testimony of other witnesses was consistent with Ms. Waggoner's. They testified that Software Developers in different groups do not perform the same duties even though they share a job title, including different programming languages, different technical focuses, and different technical challenges, such as specific end user considerations. Tr. at 1070:4-1072:15; 1075:6-1076:1 (Miranda); Tr. at 1468:6-1472:14 (Loaiza); Tr. at 585:4-586:17 (Alexander); Tr. at 635:23-636:7; 641:23-642:3 (Hardman); Tr. at 1928:10-1929:9 (Chechik). The Court finds the testimony of Mr. Miranda, Mr. Loaiza, and Ms. Chechik credible. They had specific, uniform, personal knowledge of the topics on which they testified, and their testimony was consistent across witnesses.
12. The variability of job duties within a single job code (and even across job codes) is reflected in the variability of pay at Oracle. When making compensation decisions, Oracle managers consider many factors, including (i) the skills, knowledge and experience of an applicant or employee; (ii) market demand for an applicant's skills, knowledge and experience; and (iii) Oracle's needs for that set of skills, knowledge and experience, factoring in the importance of the product or service to Oracle on which the applicant would work. Tr. at 1089:1-11 (Miranda); Tr. at 1188:2-16 (Waggoner); 1293:13-1294:1 (Balkenhol); 1403:23-1404:19 (Webb); 1438:18-1439:12 (Bashyam); 1472:3-14 (Loaiza); 1921:14-21 (Chechik). The testimony also established that the particular product or product group on which an employee works often affects compensation, as different products have different value to Oracle (and different market value) and require different skills. Tr. at 1088:14-1089:11 (Miranda); Tr. at 1438:18-1439:12 (Bashyam); Tr. at 1197:14-1198:4 (Waggoner); Tr. at

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1472:3-14 (Loaiza); Tr. at 1293:13-1294:1 (Balkenhol); Tr. at 1403:23-1404:19 (Webb).

There was no evidence presented of any manager making compensation decisions for any of the employees at issue based on gender, race, or other protected characteristic.

13. Oracle sets intentionally broad salary ranges for its job codes, which can span tens of thousands of dollars. Tr. at 1183:23-1184:6, 1187:9-1189:6 (Waggoner); D-117. The ranges “allow managers to account for difference[s] in experience, skills, competencies, and performance” within job codes. PX-24A at 180:16-181:9; Tr. at 1187:9-1188:16 (Waggoner).

III. ORACLE IS ORGANIZED INTO LINES OF BUSINESS AND COST CENTERS

14. Oracle is organized by lines of business (“LOBs”). LOBs are organizations within Oracle focused on a distinct part of Oracle’s business or operations. Tr. at 1067:6-11 (Miranda); P-274, ¶ 12. LOBs are further divided into specialized organizations and teams (also referred to as sub-LOBs or cost centers), which are organized around specific products or product groupings. Tr. at 1067:19-1068:8 (Miranda); P-290 ¶ 8.
15. Each LOB is overseen by an executive. Tr. at 1193:7-15 (Waggoner). Each LOB also has an overall operating budget, including for employee headcount and compensation, that is allocated among sub-LOBs and costs centers. Tr. at 1087:23-1088:13 (Miranda). Unlike LOBs, job functions do not have a leader and are not allocated budgets. Tr. at 1173:11-12 (Waggoner); P-274, ¶ 19; Tr. at 1088:5-13 (hiring budget); Tr. at 1090:17-20 (focal budget); Tr. at 1093:11-18 (bonus budget); Tr. at 1137:12-18 (equity budget) (Miranda).
16. LOBs and job functions at Oracle do not align. This means individuals in the Product Development job function do not necessarily work in a Product Development LOB. Tr. at 1194:6-20 (Waggoner). The same is true for IT and Support. *See, e.g.*, J-131 (showing people in the IT and Support job functions working in the Applications LOB). Employees at Oracle are managed within LOBs or cost centers, not by job function or job title.

IV. ORACLE’S HIRING AND STARTING PAY PRACTICES

17. Oracle hires employees in three ways: (i) externally, (ii) through college recruiting; and (iii) via acquisitions. Tr. at 1081:6-16, 1153:12-1154:3 (Miranda); Tr. at 1237:9-1238:18

(Waggoner). Oracle's practices for setting starting pay for each are not the same. Tr. at 1084:8-13, 1156:7-18 (Miranda); Tr. at 1239:10-1240:11 (Waggoner).

A. External Hires

18. Hiring managers are responsible for the content of the job postings for which they hire. Tr. at 1081:6-17 (Miranda). The postings identify the position's job function, specialty area, job code, job title, and career level, as well as the "brief description," "detailed description," and "job requirements" from the Global Job Table for the job code selected. *See, e.g.*, J-133; Tr. at 1085:4-13 (Miranda); Tr. at 1175:14-1177:5 (Waggoner). As described above in Fact No. 9, hiring managers also add more detailed requirements for the specific job at issue, such as coding languages (if any), and the types of products or services with which a candidate must have experience. Tr. at 1082:9-1083:5 (Miranda); Tr. at 1175:14-1177:5 (Waggoner); Tr. at 1400:21-1402:24 (Webb); Tr. at 1439:13-1440:11 (Bashyam); Tr. at 1474:19-1475:13 (Loaiza); J-133. Oracle's HR Department may review job postings before they are posted, but do not dictate their contents. Tr. at 1081:20-24 (Miranda).
19. Hiring managers are the primary decision makers when hiring for their job requisitions. They decide who to hire and make compensation decisions guided by Oracle's salary ranges and factors such as those described above in Facts 12-13. Tr. at 1084:5-13 (Miranda); Tr. at 1293:13-1294:1; 1300:10-18 (Balkenhol); Tr. at 1402:25-1405:6 (Webb); 1890:24-1891:2 (Yakkundi). A hiring manager may offer a position that is one career level lower or higher than posted based on a particular applicant's qualifications. Tr. at 1087:1-5 (Miranda). A manager may deviate from a salary range if warranted by the specifics of the job or applicant selected. Tr. at 1184:7-9 (Waggoner); Tr. at 1291:3-24 (Balkenhol).
20. With respect to prior pay, in October 2017, in response to changes in the law in California and elsewhere, Oracle implemented a policy prohibiting inquiries into, or reliance upon, prior salary information. PX-20A at 32:17-34:21; PX-24A at 40:21-41:4. Prior to October 2017, Oracle did not have a policy addressing how or whether to consider prior pay in setting starting pay. Tr. at 1198:14-16 (Waggoner); *see also*, PX-24A at 52:14-21. Rather, it was up

to individual managers whether or how to consider it. Tr. at 1222:23-1223:16 (Waggoner).

21. Hiring decisions and starting compensation offers are reviewed by the managers of the hiring managers as a “sanity check.” Tr. at 1198:20-1201:13 (Waggoner); *see also* Tr. at 1440:25-1441:22 (Bashyam). The final review is done by a team of administrative employees led by Carolyn Balkenhol, also as a “sanity check.” Tr. at 1289:7-15 (Balkenhol). Hiring decisions and starting compensation offers are rarely changed, and almost never overturned. Tr. at 1441:23-1442:1 (Bashyam); Tr. at 1473:21-24 (Loaiza); Tr. at 1293:1-5 (Balkenhol).

B. College Recruits

22. For college recruits, Oracle determines how many recruits it anticipates hiring and the compensation package it will offer. Tr. at 1108:14-1109:7 (Miranda); Tr. at 1310:18-22 (Balkenhol). College recruits (i) participate in a screening interview; (ii) select Oracle teams with whom to interview; (iii) rank the teams; and (iv) receive offers from teams where there is a match. Tr. at 1916:25-1917:14 (Chechik); Tr. at 1153:12-23, 1154:18-23 (Miranda). Hiring managers are the primary decision makers, subject to the same approval process used for experienced hires. Tr. at 1108:10-1109:3 (Miranda).

C. Acquisition Hires

23. When Oracle acquires a company, the acquired employees are “mapped” to where they best fit within Oracle. Tr. at 1238:1-1239:9 (Waggoner); D-122. While the process has changed over time and varies among acquisitions, if changes to acquired employees’ compensation are appropriate to align them with peers, changes occur either at the time of acquisition or thereafter, for example as part of the next focal review. Tr. at 1239:10-1240:11 (Waggoner).

V. ORACLE’S PRACTICES REGARDING PAY INCREASES AND EQUITY

A. Salary Increases

24. Salary increases typically occur during a process Oracle calls a “focal review.” Tr. at 1223:18-1224:7 (Waggoner). Each year, senior executives decide whether to conduct a focal review, and if so, the overall budget. Tr. at 1224:22-1227:2 (Waggoner). Each LOB head allocates the budget to managers one level below them, and then those managers determine if

and how to allocate to managers below them. *Id.*; *see also* Tr. at 1090:13-1091:3 (Miranda); Tr. at 1227:3-18 (Waggoner); Tr. at 1407:7-13 (Webb); Tr. at 1475:14-1476:5 (Loaiza).

25. Some LOBs give managers high-level guidelines regarding how to allocate focal budgets. Tr. at 1091:9-1092:4 (Miranda); Tr. at 1408:22-1409:9 (Webb); Tr. at 1478:25-1479:15 (Loaiza). Managers may be told to reward their best performers, or to not spread the budget evenly among all employees. *Id.* In instances when they are given, the guidelines do not dictate who should receive compensation increases or the amounts of any increase. *Id.*
26. As with starting pay decisions, first-level managers are typically the primary decision makers during a focal review. Tr. at 1227:3-18 (Waggoner); Tr. at 1407:14-16 (Webb); Tr. at 1476:6-16 (Loaiza); Tr. at 1894:24-1895:1 (Yakkundi). Focal allocations are subject to an approval process, either as a “sanity check” as with new hires, or to confirm lower-level managers stayed within budget. Tr. at 1408:2-21 (Webb); Tr. at 1443:1-1444:5 (Bashyam); Tr. at 1228:18-21, 1230:3-16 (Waggoner). Focal allocation decisions are rarely, if ever, overturned or changed. Tr. at 1093:3-7 (Miranda); Tr. at 1444:6-8 (Bashyam); Tr. at 1549:24-1550:1 (Chan).

B. Bonuses and Equity Grants

27. The process for distributing bonuses and equity grants is similar to the process for focal reviews. Tr. at 1231:19-1232:12, 1233:20-1234:4 (Waggoner); Tr. at 1093:11-18; 1094:3-5 (Miranda); Tr. at 1409:10-18, 1410:4-10 (Webb). The LOB budgets determine the overall bonus pool and amount of equity available for distribution, which is then allocated to lower-level managers for distribution. Tr. at 1234:8-15 (Waggoner); Tr. at 1093:8-18 (Miranda); Tr. at 1409:10-18 (Webb). As with focal reviews, some LOBs provide high-level distribution guidelines, such as a recommended percentage of employees who should receive bonuses or equity grants, although the guidelines do not dictate amounts or who should receive bonuses or equity grants. P-146; Tr. at 1233:13-19 (Waggoner); Tr. at 1410:19-22 (Webb).
28. The review process for bonus and equity allocations is similar to the focal review process. Tr. at 1234:16-22 (Waggoner); Tr. at 1093:11-1094:5 (Miranda); Tr. at 1409:19-1410:18,

(Webb); Tr. at 1444:21-1445:13 (Bashyam).

29. The Court finds that Oracle's compensation decision making is decentralized. There was no evidence of prescriptive compensation policies dictating the amount of compensation any employee should receive, nor evidence that senior management or Human Resources dictate or control compensation decisions. *See, e.g.*, JX 102A at 25:23-26:22.

VI. EXPERT TESTIMONY

30. OFCCP sought to prove its claims through statistical analyses of Oracle's compensation data. Both parties retained experts: for OFCCP, Dr. Janice Madden, a Professor at the University of Pennsylvania, and for Oracle, Dr. Ali Saad, a labor economist at Resolution Economics.
31. The data analyzed in this case covers the time period of January 1, 2013 to December 31, 2018 and includes a total of 8,465 covered employees in the three job functions at issue. Exs. P-1 at 5; P-221; J-103 ¶ 37. OFCCP contends 6,035 employees, working in 142 different job titles, are victims of discrimination: women in all three job functions, and Asian and African American men in Product Development. J-103 ¶ 37.

A. Dr. Madden's Approach to Analyzing Compensation at Oracle

32. Dr. Madden used her version of "human capital theory," which presumes earnings vary with productivity, and productivity depends on education and experience. P-1 at 7. Dr. Madden distinguishes "exogenous" characteristics (which she contends employees control) from "endogenous" characteristics (which she contends employers control). P-1 at 10. Dr. Madden opines that "endogenous" characteristics cannot be used to study whether discrimination has occurred because they are biased by the potential alleged discrimination. Tr. at 724:18-24; 870:10-25 (Madden).
33. Dr. Madden analyzed whether there were gender or racial pay differences between employees with what she considered to be "equivalent credentials." Tr. 711:14-24; 872:9-873:8 (Madden). She treats employees who came to Oracle with the same level of degree (*i.e.*, "education") and same age (*i.e.*, "work experience") as "similarly situated," without regard to the type of degree or the type of prior work experience. Tr. at 875:6-9 (Madden).

34. Dr. Madden's primary models for "total compensation" (Tables 1(a), 2(a), and 3(a) of her report) aggregate employees in all three job functions and all career levels into a single analysis. P-1 at 62, 69, 76; Tr. at 878:11-15, 879:4-15, 968:19-25 (Madden).¹ Dr. Madden's primary models for base pay (Tables 1(d), 2(d), and 3(b) of her report) mirror the structure of her total compensation analyses. Tr. at 905:4-22 (Madden).
35. Dr. Madden's analyses include only factors captured in some readily-available, quantifiable format that can readily be used in a regression model. Tr. at 874:2-6 (Madden). Her analyses do not incorporate narrative justifications for employees' starting pay, performance evaluations, or information found on resumes. Tr. at 880:13-881:25; 937:15-22 (Madden).
36. Dr. Madden did not analyze or seek to isolate the decision-making process at Oracle that allegedly caused the pay differences she claimed to have found. She did not identify any set of behaviors, common or not, by "Oracle's top management and Human Resources managers," or even lower-level managers, responsible for any alleged pay discrimination.

B. Dr. Madden's Approach to Job Steering ("Assignments") at Oracle

37. When Dr. Madden refers to jobs being "assigned," she means the job the person holds, not how the person obtained that job. Tr. at 914:7-11 (Madden). Dr. Madden did not analyze job assignments in her initial report (*i.e.*, she did not study whether employees sought a particular role but were assigned elsewhere), did not consider the specific job requisitions to which employees applied and into which they were hired, and did not study whether there were differences based on race or gender. Tr. at 913:18-914:6 (Madden); J-104 ¶ 8.
38. In her rebuttal report, Dr. Madden took Dr. Saad's analysis of selections at hire and presented results in Charts R1 and R2 looking at only three out of the six IC global career levels, and only for Asians and women. D-449 at 56-57; Tr. at 833:5-835:4 (Madden). Even within these three career levels, Dr. Madden found no statistically significant differences in half of the

¹ Tables 1(b), 1(c), 2(b), and 2(c) of Dr. Madden's initial report apply her primary pay models for total compensation to subsets of the employees at issue with only minor modifications. Tr. at 902:10-905:3 (Madden).

comparisons she examined. D-449 at 37-38, 56-57; Tr. at 1724:14-1726:5 (Saad).

39. Dr. Madden also conducted analyses purporting to show women were statistically significantly less likely to be promoted out of IC3 or IC4. These analyses used the same flawed “education” and “experience” controls as in her primary pay models, and do not consider whether employees actually sought promotion. And even these analyses did not show statistically significant disparities for any of the eight other global career levels she studied. P-1 at 52-54, 104-105; Tr. at 919:1-920:24 (Madden); 1726:12-1728:25 (Saad).
40. Dr. Madden testified she did not find any evidence of promotion discrimination against Asians based on any of her analyses. Tr. at 945:17-25 (Madden).

C. Dr. Madden’s Approach to Analyzing the Role of Prior Pay at Oracle

41. Dr. Madden computed the correlation between starting pay at Oracle and prior pay for a subset of employees and found a 0.78 correlation. P-1 at 51-52; Tr. at 1733:13-1736:5 (Saad). As she admitted, correlation does not prove causation. Tr. at 913:3-7 (Madden).

D. Dr. Madden’s Analyses Are Unreliable and Do Not Prove Discrimination

42. Dr. Saad responded to and criticized Dr. Madden’s analyses, which he opined do not support OFCCP’s allegations because they (a) rest on untested assumptions instead of empirical study; (b) are mis-specified, in that they improperly aggregate together too broad a set of employees; (c) use inadequate controls that fail to similarly situate individuals with respect to the work they are performing; (d) fail to appropriately model the two primary controls (experience and education) that she claims are relevant when analyzing pay; and (e) omit important factors that were available in Oracle’s data to proxy the work employees perform and their skills. Tr. at 1596:3-1598:11, 1743:6-1744:24 (Saad).
43. Dr. Saad’s ultimate conclusion was that Dr. Madden’s “human capital” approach was too simplistic to support any inferences that the pay practices she analyzed are discriminatory. Tr. at 1599:1-14 (Saad). The Court finds that Dr. Saad’s critiques of Dr. Madden’s analyses were credible. Dr. Saad’s critiques were detailed, rebutted Dr. Madden’s assumptions, and his testimony on direct and cross examination reflected his expertise and familiarity with

statistics and labor economics.

1. Dr. Madden's Pay Analyses Do Not Generate Meaningful Results

44. As Dr. Saad illustrated through “scatter plots,” Dr. Madden’s primary pay models do not accurately explain employees’ actual pay, signifying that her models omitted important variables or failed to accurately model the factors that impact pay. Tr. at 1649:11-1652:1, 1661:21-1662:17 (Saad); J-104 at ¶¶ 36, 38.
45. As Dr. Saad demonstrated, in Dr. Madden’s pay models, the length of time an employee spent at Oracle impacts pay differently in different organizations (which he deemed a proxy for working on different products), even among employees who share a job code. J-103, pp. 50-51; Tr. at 1695:23-1697:11 (Saad). Thus, Dr. Saad demonstrated that by aggregating widely diverse employees into the same model, the impact on pay of the various factors Dr. Madden used are overstated for some employees and understated for others, thereby biasing her analysis and leading to inaccurate conclusions. Tr. at 1614:6-1617:17 (Saad).
46. As Dr. Saad showed, employees who share a job code do not necessarily perform similar work. Tr. at 738:2-15, 967:10-13 (Madden); 1596:2-8 (Saad). Dr. Saad’s “cluster analysis,” which focused on hundreds of job requisitions for Software Developer 4s, demonstrated substantial variation in the skills and responsibilities associated with particular jobs within this job code, as well as significant differences in average pay for new hires into different roles that share this job code. J-103, Attachment E; Tr. at 1658:3-1661:20 (Saad).
47. Dr. Madden’s “education” control does not consider the subject matter of the degree received, and yet Dr. Saad demonstrated that employees of different races and genders pursue degrees in different educational areas. J-104 ¶¶ 49-52, Attachment C; Tr. at 1645:8-1647:4 (Saad). Dr. Madden’s use of age to proxy “experience” is similarly deficient because it does not capture the type or relevance of prior experience. J-104 ¶¶ 58-59.
48. Dr. Madden’s analyses are further flawed because they do not consider performance or productivity. As an example, considering whether an individual had received a patent bonus at Oracle for engaging in patentable work is a proxy for innovation and productivity, yet Dr.

Madden did not consider whether employees received a patent bonus. J-104 at ¶ 84; Tr. at 1688:24-1691:23 (Saad); Tr. at 925:14-16 (Madden).

49. The “R-squared” values of Dr. Madden’s analyses (which measure how much variation in employees’ pay is explained by the variables in the model), range from approximately 20 percent (for Column 5) to 70 percent (for Column 8), meaning that between 30-80 percent of the variation in pay remains unexplained by those models. Tr. at 1662:18-25; 1664:24-1665:22, 1670:24-1672:21 (Saad); Tr. at 899:5-900:2 (Madden).
50. Dr. Saad replicated Dr. Madden’s models but adjusted the measurement of certain variables and included additional omitted variables, including patent bonuses and organization. Tr. at 1675:1-14, 1679:14-25, 1688:24-1689:20, 1693:25-1694:16 (Saad). Those revisions eliminated Dr. Madden’s statistically significant findings in the majority of years studied and increased the R-squared values (the explanatory power) of Dr. Madden’s models considerably, to 80-90 percent. Tr. at 1680:1-15; 1708:2-24 (Saad). The Court finds that once additional factors impacting pay at Oracle are included, the gender- and race-based pay disparities that OFCCP claims to have found largely disappear.

2. A Direct Study of Assignments Shows No Discrimination by Oracle

51. Unlike Dr. Madden, Dr. Saad conducted an analysis of selections at hire to test for evidence of discriminatory steering. Tr. at 1712:1-13 (Saad). Dr. Saad analyzed the career levels to which employees of different races and genders applied. Based on that analysis, Dr. Saad found that women and men apply to IC jobs at different levels at statistically significant rates, Tr. at 1712:1-1713:5 (Saad); J-103 ¶¶ 147-149, and that Asians and Whites apply to both IC and M jobs at different levels at statistically significant rates. Tr. at 1714:2-10 (Saad). Nevertheless, “the majority of people ended up in positions at the level they applied to,” regardless of race or gender – that is, their decision regarding the level to which to apply (rather than any decisions by Oracle) dictated the level at which they were hired. Tr. at 1715:6-1717:1 (Saad); J-103 ¶¶ 150-156.
52. In instances when employees were “up-leveled” or “down-leveled” at hire, there is no pattern

of statistically significant disparities by race or gender. Tr. at 1717:2-1721:8 (Saad); J-103 ¶¶ 150-156. Most employees were hired into the organization to which they applied. Tr. at 1697:20-1699:8 (Saad); J-104 ¶¶ 78-79.

53. The promotions model Dr. Madden used produces no statistically significant adverse results in any career level for Asians or African Americans, and some results are statistically significant in their favor. Tr. at 1729:1-1730:19 (Saad); J-104 ¶¶ 68-72. It shows adverse results for women in only two of ten career levels. Tr. at 919:1-920:24 (Madden).

3. Dr. Madden's Prior Pay Analysis Is Not Probative of Discrimination

54. Dr. Madden did not demonstrate any causal relationship between prior pay and starting pay. Instead, she merely identified a correlation that would be expected even if Oracle did not rely on prior pay. Tr. at 1598:16-25, 1739:10-1741:9 (Saad). Both experts agreed correlation does not prove causation. Tr. at 912:3-913:7 (Madden); Tr. at 1740:17-1741:9 (Saad). As Dr. Saad demonstrated, the 0.78 correlation Dr. Madden found at Oracle is “really no different than what is found elsewhere in the economy,” as reflected in the 0.75 correlation that is found economy-wide based on data in the National Longitudinal Survey. Tr. at 1587:17-1588:2, 1739:10-1740:5 (Saad); J-103 ¶ 144.

VII. ANECDOTAL EVIDENCE

55. OFCCP's anecdotal evidence did not demonstrate bias or discrimination. Several OFCCP witnesses testified they believed their pay was “unfair” and/or they should have been promoted. *See e.g.*, Tr. at 179:21-23 (Ng); Tr. at 222:1-4 (Shah); Tr. at 266:14-18 (Boross); Tr. at 409:8-14 (Pandey); Tr. at 566:8-567:4 (Alexander). But these witnesses did not assert that they were underpaid or denied promotion because of their race or gender. The closest was Mr. Pandey, but even he declined to expressly state he was underpaid on the basis of race. Tr. at 447:9-449:16 (Pandey).
56. Multiple witnesses testified they never experienced discrimination at Oracle. Tr. at 1517:16-24 (Adjei); Tr. at 1303:5-8 (Balkenhol); Tr. at 1241:7-1242:4 (Waggoner); Tr. at 1526:19-21; 1551:18-1552:19 (Chan); Tr. at 1896:8-11 (Yakkundi); Tr. at 1932:20-1933:3 (Chechik).

57. Only one OFCCP witness came close to testifying about alleged bias, and it was not relevant to this action. Kristen Hanson Garcia, a former HR manager, testified that once in the “mid-2000s,” she heard Joyce Westerdahl, Oracle’s Executive Vice President, Human Resources, say “Well, if you hire a woman, she’ll work harder for less money.” Tr. at 80:4-13 (Hanson Garcia). There is no evidence, however, that Ms. Westerdahl was involved with compensation decisions. Tr. at 1240:22-25 (Waggoner). Additionally, Ms. Westerdahl denies making this comment. PX-26A at 338:19-22.
58. OFCCP did not introduce evidence of “top management” or “Human Resource managers” determining compensation decisions. OFCCP’s witnesses lacked insight into higher-level reviews of their compensation decisions. Tr. at 155:7-17 (Klagenberg). The guidance they did receive regarding distribution of focal review raises was merit-based and did not specify who should receive a raise or the amount, and some managers did not follow the guidance. Tr. at 131:2-20, 155:7-156:1 (Klagenberg); Tr. at 421:1-21 (Pandey). There was no evidence that decisions were overturned, nor evidence that guidance was related to gender or race.
59. Oracle instructs managers that pay decisions must be based on fair, justifiable and non-discriminatory criteria, and to assess for internal pay equity among employees on their particular teams when making any pay decisions. J-138 at slide 5; Tr. at 1404:20-1405:6 (Webb); Tr. at 1443:7-1444:8 (Bashyam). Oracle also has a procedure to provide off-cycle pay increases to address potential pay disparities. Tr. at 1235:11-1236:2 (Waggoner).
60. Other evidence weighs against finding discriminatory intent by senior Oracle management. Oracle’s CEO, Head of Human Resources, and General Counsel are all women. Tr. at 1302:21-1303:4 (Balkenhol). Thomas Kurian, the former President of Product Development, is Asian (Indian). Tr. at 446:11-24 (Pandey). Oracle has Equal Employment Opportunity and Diversity Policies. D-38 at 10; Tr. at 1364:10-15 (Thrasher). Oracle requires managers and employees to take anti-harassment training, including anti-discrimination and affirmative action training. Tr. at 1366:11-1367:10 (Thrasher); Tr. 1516:12-18 (Adjei). Oracle requires all employees to take Code of Conduct and Respectful Workplace training. Tr. at 1366:11-

ORACLE’S PROPOSED FINDINGS OF FACT

1367:10 (Thrasher). Oracle offers Diversity and Inclusion training, such as Unconscious Bias training. Tr. at 1367:11-1368:13 (Thrasher). Oracle provides a means and mechanism for addressing complaints about discrimination, including pay discrimination, and a group of attorneys and investigators handle these complaints. Tr. at 494:20-495:3 (Baxter).

61. Oracle has numerous initiatives to increase the number of women and minorities at Oracle, including a monthly diversity newsletter, Employee Resource Groups for employees of color, supporting organizations promoting the advancement of African American employees, and a women's initiative, Oracle Women's Leadership. Tr. at 1345:6-18, 1347:20-1348:2, 1356:5-1357:18 (Thrasher); D-86; Tr. at 1517:2-15 (Adjei); D-94; D-98.
62. There is no evidence of a mechanism to support OFCCP's steering claim. OFCCP's managerial witnesses did not testify higher-level managers or HR dictated hiring decisions. There is no anecdotal evidence of employees applying for one job and being steered into a lower-paying role. Employees who testified about hiring were hired into the role to which they applied. *See* Tr. at 167:19-24 (Ng); Tr. at 213:8-15 (Shah); Tr. at 288:25-289:2 (Boross).
63. OFCCP offered no anecdotal evidence of managers basing starting pay on prior pay.

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Respectfully submitted,

GARY R. SINISCALCO
ERIN M. CONNELL
WARRINGTON S. PARKER III
KATHRYN G. MANTOAN



ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105-2669
Telephone: (415) 773-5700
Email: grsiniscalco@orrick.com
econnell@orrick.com
wparker@orrick.com
kmantoan@orrick.com

Attorneys for Defendant
ORACLE AMERICA, INC.